

EXHIBIT 4

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John Van Merkensteijn – April 19, 2021

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
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CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

This document relates to case nos.
19-cv-01783; 19-cv-01788; 19-cv-01794;
19-cv-01798; 19-cv-01918

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
JOHN VAN MERKENSTEIJN
DATE: April 19, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 And I don't remember what the issue
2 was about which Jerome felt it was right to
3 hold back money that was due to Solo.

4 Q Did he explain to you what the
5 aggressive behavior was that Mr. Shah was
6 conducting towards them?

7 A I vaguely remember there was some
8 issue about money, and I don't remember what
9 it was. But interpreting this, you
10 can -- you know, Solo wanted more for
11 something, Jerome didn't want to pay it, or
12 didn't want to repay what we owed him, or
13 something.

14 I don't remember the specifics. My
15 recollection is it's about money.

16 Q Okay. He references the issue as
17 between him and Rich Markowitz.

18 Do you know what that's referring
19 to?

20 A Yes. As between Rich on the one
21 side, and Jerome and Matt on the other. Over
22 time, there was a sort of stressful
23 relationship that developed.

24 And once they -- the Maple Point
25 guys bought the bank without our

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1 participation, that reached a breaking point.

2 Q And you respond to Mr. Lhote's
3 note. And part of your response says, "As
4 far as Sanjay goes, you know my feeling,
5 which is whatever may or may not have been
6 done or not done by him or anyone else, let's
7 not add fuel to the fire, and just get
8 through this gracefully and as best as we can
9 and retain our own integrity."

10 What was your view or feeling with
11 respect to Sanjay Shah at that point?

12 A I don't remember what the economic
13 issues were. But it may have had to do
14 with he wanted more of a share or -- I don't
15 know.

16 I don't remember specifically. But
17 I didn't really care.

18 Q After the split with Stein and
19 Lhote, did you and Mr. Markowitz have any
20 discussions with Sanjay Shah about how the
21 dividend arbitrage trading would continue
22 after that group split up?

23 A Yes.

24 Q And what do you recall about those
25 discussions?

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1 A We communicated to him that we were
2 not part of that bank in Germany that had
3 been bought by Matt and Jerome, and got to a
4 point where he understood we weren't part of
5 that exercise, which is what he was upset
6 about.

7 And therefore, he offered to
8 continue to trade with us, but not with Matt
9 and Jerome.

10 Q Would the same entities, the same
11 plans be used going forward?

12 A Well, the entities we had as Argre
13 which, in the end, stop trading, there was a
14 period where we talked about toning down the
15 Argre trades or something, but it got too
16 complicated. And in the end, there were no
17 more Argre-related plans and we had to
18 substitute plans.

19 Q Okay. Were there any discussions
20 with Mr. Shah about how many plans could be
21 formed to continue the trading?

22 A Yes. As before, he would tell us
23 how many plans we could have.

24 Q All right. And so, for this period
25 of time, do you recall how many plans he said

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1 you could have?

2 A I don't have an exact recollection.

3 I think it was 30-something.

4 Q Was this the point in time in which
5 the fee and profit-sharing arrangement
6 changed from two-thirds to 75 percent?

7 A I don't remember when that shifted,
8 percentages changed.

9 Q Okay. But whenever that shift
10 happened, the new split was 75 percent Solo,
11 25 percent to the plan?

12 A I believe so.

13 Q All right. Just bear with me. I'm
14 crossing one or two exhibits off my list
15 here, which is a good thing.

16 A Sorry?

17 Q I'm just crossing a few documents
18 off the list. That's always a good thing, so
19 bear with me.

20 Can you turn, please, to
21 Exhibit 2265?

22 A 2265. It's the other volume.

23 Q Sorry. Okay. If you can turn to
24 the last page -- or the third page, at least,
25 at the top of it?

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1 particular numbers when describing this to
2 them?

3 A I don't recall.

4 Q All right. Did Sanjay Shah ever
5 tell you that you could expect that each plan
6 would earn approximately a million dollars?

7 A I don't remember Sanjay
8 specifically using that. But I don't see the
9 logic because it all depended on how long you
10 traded. But, you know.

11 So I don't -- I don't know where
12 the number goes.

13 Q Okay. If you turn to the first
14 page of the exhibit?

15 A Yes.

16 Q You inform Amy Gregory and Peter
17 Wells that the plan is to submit, for
18 onboarding process, a total of 34 plans.

19 And so was that the number of plans
20 that was discussed with Sanjay Shah that your
21 group could have participate after the Argre
22 split?

23 A Whatever the e-mail said reflects
24 what Sanjay told us we could onboard.

25 Q All right. And then you split up

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1 use their LLCs for.

2 Is that right?

3 A Well, I didn't know what I was
4 going to use my LLCs for yet, either. I
5 mean, you're jumping the gun.

6 Q Fair enough.

7 So you certainly didn't know what
8 they were going to use theirs for?

9 A No. You know, you had to get
10 started, you had to form it, then figure out
11 what you would do.

12 Q All right. Can you turn to
13 Exhibit 2189?

14 MR. WEINSTEIN: Mark this as 2189.

15 (Whereupon the above mentioned was
16 marked for Identification.)

17 A (Witness reviewing.)

18 Q So this is another summary chart
19 that we prepared -- you're free to rip it out
20 of the binder if you'd like, as well -- for
21 the LLCs and the pension plans that were
22 formed in 2014, the plan participant for
23 each.

24 A Okay.

25 Q With respect to the LLCs that were

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1 Q And why did you sign a power of
2 attorney to Michael Ben-Jacob to perform
3 these activities?

4 A To simplify getting things signed.

5 Q Do you know if he actually did end
6 up performing these various activities on
7 behalf of your pension plans?

8 A I assume so, yes.

9 Q Okay. Do you know if the other
10 people listed on the prior exhibit who opened
11 up pension plans in 2014 also signed limited
12 powers of attorney with Mr. Ben-Jacob?

13 A No, I don't know, but I assume so.

14 Q It was your understanding that
15 Kaye Scholer played the same role for all the
16 new plans?

17 A Yes.

18 Q Do you know -- you mentioned that
19 the -- your former Argre partners started to
20 use the name Maple Point.

21 Is that right?

22 A Correct.

23 Q And do you know if Kaye Scholer
24 played any similar role for the Maple Point
25 plans that they opened up as they had for the

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1 previous set of plans?

2 A I don't believe so.

3 Q Did you expect Mr. Ben-Jacob to
4 keep you informed of the various activities
5 that he was doing on behalf of your plans
6 pursuant to this limited power of attorney?

7 A We expected Peter Wells or Michael
8 or whoever to keep us posted on what they
9 were doing, yes.

10 Q And did they, as far as you know?

11 A As far as I know, yes.

12 Q Are you familiar with the
13 Form 6166?

14 A Yes.

15 Q All right. What's your
16 understanding of what that was?

17 A Well, I'd have to look at the form
18 specifically for the wording.

19 Q All right. Did you understand that
20 those forms were submitted with the reclaim
21 applications to the foreign tax authorities?

22 A I believe they needed that as part
23 of the refund process, yes.

24 Q All right. Can you turn to
25 Exhibit 2192?

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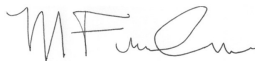
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C E R T I F I C A T E

I, MICHAEL FRIEDMAN, a Certified Court Reporter and Notary Public, qualified in and for the State of New Jersey do hereby certify that prior to the commencement of the examination JOHN VAN MERKENSTEIJN was duly sworn by me to testify to the truth the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER certify that I am neither a relative of nor employee nor attorney nor counsel for any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



MICHAEL FRIEDMAN, CCR of the
State of New Jersey
License No: 30XI00228600
Date: April 20, 2021